347031

BEFORE THE
U.S. DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C.

In the matter of:	)	
NOTICE OF PROPOSED RULEMAKING CONCERNING AVIATION DATA MODERNIZATION REQUIREMENTS	)	**Docket OST-1998-4043 - 108**

JOINT SUPPLEMENTAL COMMENTS OF AIRTRAN AIRWAYS, ALASKA AIRLINES, ATA AIRLINES, AIR CARRIER ASSOCIATION OF AMERICA, FRONTIER AIRLINES, INDEPENDENCE AIR, JETBLUE AIRWAYS, MIDWEST AIRLINES, SOUTHWEST AIRLINES, SPIRIT AIRLINES, AND US AIRWAYS

Communications with respect to this document should be sent to:

Richard Magurno
Senior Vice President &
General Counsel
AIRTRAN AIRWAYS, INC.
9955 AirTran Boulevard
Orlando, FL 32827
(407) 318-5113

Thomas O'Grady
Staff VP – Commercial & Regulatory
Law and Deputy General Counsel
ALASKA AIRLINES, INC.
19300 International Blvd.
Seattle, WA 98168
(206) 392-5033

Brian T. Hunt
Senior Vice President &
General Counsel
ATA AIRLINES, INC.
4337 West Washington St.
Indianapolis, IN 46251
(317) 282-7006

Edward P. Faberman
Executive Director
AIR CARRIER ASSOCIATION
OF AMERICA
1776 K Street NW
Washington, DC 20006
(202) 219-7402

(Joint Commenters continued next page)

David Sislowski
General Counsel
FRONTIER AIRLINES, INC.
Frontier Center One
7001 Tower Road
Denver, CO 80249
(720) 374-4512

Richard J. Kennedy
Vice President and
General Counsel
INDEPENDENCE AIR, INC.
45200 Business Court
Dulles, VA 20166
(703) 650-6500

Robert C. Land
Vice President – Government Affairs
& Associate General Counsel
JETBLUE AIRWAYS, INC.
P.O. Box 1927
Rockville, MD 20849
(301) 279-9727

Carol Skornicka
Senior Vice President,
General Counsel & Secretary
MIDWEST AIRLINES, INC.
6744 South Howell Avenue
Oak Creek, WI 53154
(414) 570-4000

Robert W. Kneisley
Associate General Counsel
SOUTHWEST AIRLINES CO.
1901 L Street, N.W.
Washington, DC 20036
(202) 263-6284

Mark S. Kahan
Vice Chairman &
General Counsel
SPIRIT AIRLINES, INC.
2800 Executive Way
Miramar, Florida 33025
(954) 447-7965

Michelle Matheson
Director, Legal Affairs
US AIRWAYS
111 W. Rio Salado Pkwy.
Tempe, AZ 85281
(480) 693-5808

September 30, 2005

BEFORE THE
U.S. DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C.

In the matter of:	)	
NOTICE OF PROPOSED RULEMAKING CONCERNING AVIATION DATA MODERNIZATION REQUIREMENTS	)	**Docket OST-1998-4043**

JOINT SUPPLEMENTAL COMMENTS OF AIRTRAN AIRWAYS, ALASKA AIRLINES, ATA AIRLINES, AIR CARRIER ASSOCIATION OF AMERICA, FRONTIER AIRLINES, INDEPENDENCE AIR, JETBLUE AIRWAYS, MIDWEST AIRLINES, SOUTHWEST AIRLINES, SPIRIT AIRLINES, AND US AIRWAYS

The above named small and low-cost carriers (the Joint Commenters) submit these supplemental comments in response to the Notice of Proposed Rulemaking (NPRM) issued by the Department of Transportation (DOT or Department) on February 17, 2005 in the this docket. The Joint Commenters filed initial comments on the NPRM July 18, 2005.

The overwhelming majority of parties that filed comments in this proceeding expressed concern that the NPRM's data-collection proposals are excessively burdensome and encroach into competitively sensitive areas. Most parties' comments also are consistent with the position of the Joint Commenters that the NPRM has not articulated any legitimate need or justification for imposing sweeping new data reporting burdens on a deregulated airline industry. The few comments that express any support at all for the NPRM do so in a highly qualified way, do not attempt to demonstrate that

the purported benefits of additional data reporting outweigh the costs, and appear to be motivated solely by commercial self-interest. No party supports the NPRM as written.

Because the NPRM lacks a convincing legal or policy justification, and has no evidentiary support in the record, it should be promptly withdrawn. If the Department in the future establishes a legitimate regulatory need to collect more data from air carriers, it should pursue the incremental, less-burdensome and competitively-neutral steps that the Joint Commenters and other parties have suggested to achieve that objective.

I. THE OVERWHELMING MAJORITY OF COMMENTS AGREE THAT THE NPRM IS OVERLY BURDENSOME AND RAISES COMPETITIVE CONCERNS.

In our initial comments we pointed out that the NPRM would impose undue burdens on the airline industry in several ways: by increasing the volume of O&D data reported *ten-fold* (from a 10% sample to 100% census); by increasing the frequency of reporting three-fold (from quarterly to monthly); by drastically increasing the scope of data reported (adding 12 new data elements); and by requiring detailed data on *every* passenger carried on *every* flight in *every* market. We also pointed out that the NPRM would have severe anti-competitive consequences. By forcing airlines to disclose their most highly confidential financial and operational data to competitors, the NPRM would have the perverse effect of penalizing the most efficient and successful carriers while rewarding the inefficient and unsuccessful. The public dissemination of competitors' flight-level information would provide the largest legacy airlines with an important advantage in competing with small and low-cost carriers, making entry into dominated markets more difficult, and ultimately raising prices for consumers.

The overwhelming majority of comments filed by other parties raise concerns similar to those raised by the Joint Commenters. All of the legacy airlines that commented, as well as the Air Transport Association, express strong opposition to the excessive burden of the NPRM's proposed new reporting requirements.[1] Even third-party data analysts, such as Data Base Products and BACK Aviation Solutions, caution against the unwarranted costs that the NPRM would impose on the struggling airline industry.[2] Data Base Products supports incremental steps such as a reduction in the reporting seat threshold and the inclusion of foreign carriers in the O&D Survey, but argues against an increase in the sample size:

> We do not believe that expanding the sample size will significantly improve the quality of reported data. The suggestion in the NPRM of requiring broader participation in the Survey by reducing the seat limit for exemptions would be the best way to improve the information gathered for small airports.[3]

BACK Aviation also supports incremental enhancements to the survey but calls for a rigorous cost-benefit analysis for all new reporting requirements to determine whether or not they should be implemented.[4]

> BACK believes that recommendations for new requirements should be subject to rigorous cost-benefit analysis to provide justification. It is unclear from the NPRM whether carrier input was involved in estimating cost burden and examining the impact of providing data at this level of granularity.[5]

BACK Aviation also calls into question the practical ability of the Department to accomplish its ambitious proposal. "In BACK's extensive global experience working with

---

[1] American Airlines comments at 5-8, 9-10; Continental Airlines comments at 1, 4; Delta Airlines comments at 11-22, 29-31; Northwest Airlines comments at 6, 9-12; United Airlines comments at 6, 12; Air Transport Ass'n comments at 1-3.
[2] Data Base Products comments at 3 (5/11/05); BACK Aviation comments at 2-3.
[3] Data Base Products comments at 3.
[4] BACK Aviation comments at 1-2.
[5] BACK Aviation comments at 2.

disparate aviation data collections and proposed new filing requirements, attempts to collect and disseminate carrier revenue and traffic by flight number and day have not been successful."[6]

Similarly, no party accepted the NPRM's implausible suggestion that a ten-fold *increase* in O&D sample size, coupled with a dramatic *expansion* of the number of data elements required, plus a tripling of the number of submissions required (monthly rather than quarterly), will somehow *reduce* the carriers' overall cost of data reporting. 70 Fed. Reg. 8140, 8179-80. To the contrary, all commenting carriers expressed serious concerns about the new and increased cost, labor and programming burdens that the NPRM would create.

The proposal to require O&D reporting for 100% of all tickets sold illustrates the point. While the NPRM laments inaccuracies in current aviation data, it provides no rigorous analysis of how widespread these problems are, or what is the least-burdensome means of correcting them.[7] In fact, the NPRM's primary justification for increasing the O&D sample size is the Department's purported need for additional data in Essential Air Service (EAS) markets. Id. at 8168. But the NPRM offers no sense of proportion for this problem, even assuming it exists. In fact, EAS markets generated only slightly more than one million passengers in calendar 2004.[8] In the same year,

---

[6] Id. at 3.

[7] The NRPM states that "using a valid, random, 10 percent sample, the smallest market in which a 10 percent change in the market could be detected with 95 percent confidence is a market of approximately 29,000 passengers." Id. Conversely, the NPRM also states that a 24.4 percent sample would allow the Department to detect a 10 percent change with 95 percent confidence in a study of a market with an estimated total of only 10,000 passengers. Id. But these examples raise more questions then they answer. The NPRM does not establish the level of statistical accuracy required for the Department to fulfill its statutory duties, and presents no evidence that the current level of accuracy is inadequate for the vast majority of domestic O&D markets.

[8] 1.026 million passengers were carried in 100 EAS markets according to data from Form 41, Schedule T-100, US Air Carrier Traffic and Capacity Data, CY 2004 (Alaska not included).

U.S. airlines carried a total of 607 million passengers in all domestic markets. EAS traffic thus represents *less than .2 percent* of all domestic passengers. For the NPRM to impose massive new reporting burdens on *all* air carriers in *all* markets is truly the EAS "tail" wagging the total airline industry "dog." The NPRM also overlooks the fact that the Department could generate vastly more data on EAS markets with no change to the O&D sample size simply by eliminating the current reporting exemption for aircraft of 60 seats or less (as most comments support), since EAS markets are served almost exclusively with small aircraft. At the very least, the Department should take this sensible step and undergo a period of experience with it before considering radical new reporting burdens on non-EAS airlines.

Beyond this, all airlines that commented on the NPRM expressed reservations about the anti-competitive effects of public dissemination of confidential financial and traffic data. While there are different views about the sensitivity of different data elements, all the airlines, including legacy carriers, raised objections to the release of proprietary information to the public and their competitors. For example, United states that "the public availability of an increased volume of data regarding its operations will expose United to a variety of threats from competitors."[9] Delta urges the Department not to release any disaggregated transaction level fare data to the public, stating that this information "should all be treated as confidential business secrets and protected from disclosure indefinitely."[10] Continental opposes any reporting requirement for granular, flight-specific data, and therefore "Continental also opposes release of such

[9] United Airlines comments at 2.
[10] Delta Airlines comments at 28-29.

data, such as flight-specific fare and passenger information."[11] American opposes the release of fare basis code and ticket designator information ("[o]bviously such competitively sensitive information is confidential and should not be publicly released").[12] Northwest objects to providing information on its ticket designator or commission payments "([t]here is simply no justification for requiring airlines to provide their competitors and the government such detailed information about the nature of the inducements and discounts that they respectively provide to their customers and agents").[13]

These objections reinforce the concerns raised by the Joint Commenters in our earlier comments.[14] The "flight-level" data that the NPRM proposes to collect and release to the public consists of the most sensitive details of an airline's sales and traffic operations. In contrast to the market-aggregated O&D data that the DOT now publishes, the NPRM contemplates the collection and publication of financial and traffic data on *every passenger on every flight in every market served by every airline – every day*. This would effectively expose each airline's pricing and revenue management strategies (on both a market-by-market and flight-by-flight basis) to competitors – a policy that would have the perverse effect of penalizing the most efficient airlines, while rewarding the inefficient. The data generated by the NPRM would allow competitors to gain unprecedented insight into pricing and revenue management strategies of low-cost carriers that are now confidential, impeding LCC's ability to provide vigorous competition in heavily dominated markets. The travelling public will be harmed by the

[11] Continental Airlines comments at 15.
[12] American Airlines comments at 2, n.1.
[13] Northwest Airlines comments at 9.
[14] See July 18 Joint Comments at 17-22.

resulting loss of competition and a perpetuation of high fares. Yet the NPRM does not acknowledge, much less attempt to evaluate the cost of, these foreseeable anti-competitive consequences.

The fact that even legacy carriers object to the DOT's dissemination of proprietary data suggests that the NPRM has an even greater potential for anti-competitive actions than the Joint Commenters anticipated. Although the NPRM recognizes that the data in question is competitively sensitive (see 70 Fed. Reg. 8140, 8177), it does not address in any meaningful way the consequences of public release of the data on airline competition and the travelling public. The NPRM's failure to address these issues suggests that the Department has not thought through the consequences of its own proposals, and that the NPRM lacks a sufficient legal basis under long-established standards for agency rulemaking. See, *e.g., Morall v. DEA*, 412 F. 3d 165, 177 (D.C. Cir. 2005) ("an agency decision is arbitrary and capricious if the agency...entirely failed to consider an important aspect of the problem [or] offered an explanation for its decision that runs counter to the evidence before the agency..."), quoting *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto Ins. Co.*, 463 U.S. 29, 43 (1983).

II. THE FEW COMMENTS THAT EXPRESS ANY SUPPORT FOR THE NPRM DO SO ON A HIGHLY QUALIFIED BASIS AND WITHOUT ANY ANALYSIS OF THE COSTS OR CONSEQUENCES INVOLVED. THESE COMMENTS PROVIDE NO JUSTIFICATION FOR THE MASSIVE EXPANSION OF DATA REPORTING PROPOSED IN THE NPRM.

As noted above, virtually all commenting parties recognize that publishing flight-level financial and traffic data would have adverse competitive consequences. Only a few comments support the reporting of any flight-level data elements, and they do so on

a highly qualified and selective basis. None of these comments attempt to demonstrate that the purported benefits of such increased reporting outweigh the costs on the industry and, ultimately, on the travelling public. In fact, the tepid support expressed by some of the legacy carriers for increased data reporting appears to be driven entirely by their own self-interest: they evidently believe that the competitive advantage they will gain from obtaining other carriers' confidential data will outweigh their own cost of providing similar data. Obviously, this does not justify *any* rule change. The DOT has the burden of demonstrating that any increased data reporting is necessary to serve a legitimate statutory purpose and that the public benefits of doing so outweigh the costs. The NPRM falls far short of this burden, and none of the comments supply the justification that the NPRM lacks.

For example, American Airlines suggests that carriers should be required to specify several elements of the booking process for each ticket they report -- advance purchase requirement, minimum stay requirement, refundability, and one-way or roundtrip characteristics of each ticket sold -- but only if the DOT or a third-party develops a six character alphanumeric code that disguises the reporting carrier's identity.[15] American knows full well that the booking information it is proposing be reported is competitively sensitive, highly proprietary, and would never be released by the airlines voluntarily. Yet American offers no convincing justification for forcing carriers to report this information, nor any analysis of the cost burdens or competitive consequences of doing so. Beyond this, American fails to explain how the use of its suggested "code" would effectively conceal the identity of the reporting carrier. Coupled

[15] American Airlines comments at 4, n. 3.

with information that is already currently available, we do not believe it would be difficult for any sophisticated airline analyst to determine the reporting carrier's identity, particularly in city-pairs where service is offered by only one or a few carriers. American's suggestion thus is unworkable in any case.

United Airlines, on the other hand, suggests that the DOT should collect certain flight-level data elements to identify one-way trips. However, the Joint Commenters believe that the DOT's current methodology for determining one-way trips is accurate in the vast majority of cases and that no change is warranted. The slight improvement in data accuracy that might result from such a drastic increase in required additional data does not remotely justify the significant financial and competitive costs to the carriers. Like American, United has made no effort to evaluate the costs of its proposal or to show that its purported "benefits" outweigh those costs.

Although Northwest Airlines expresses concern about the burdens of increased reporting, it nevertheless seems eager to acquire proprietary information about its competitors.[16] For example, Northwest suggests that carriers be required to report a number of "specific flight variables" (scheduled flight date, departure time, master flight number and date of issue) for all reported tickets. Northwest asserts that this information will allow "carriers to analyze changing patterns of consumer purchasing behavior over the booking window."[17] What legitimate interest does Northwest have in analyzing the booking windows of its competitors' customers? What other industry is required by the government to provide this type of sensitive sales information to its

[16] Northwest Airlines comments at 2, 6, 9-12.
[17] Id. at 8.

competitors? Again, the only basis for this proposal appears to be the proponent's competitive self-interest. Northwest offers no other justification, and makes no attempt to weigh the costs of its proposal against its purported "benefits." Northwest's zeal to procure this type of confidential information from competitors only reinforces our concern that if proprietary sales data is publicly released, legacy carriers will mis-use it to thwart new entry and competition.

Not surprisingly, the Airports Council International (ACI) generally likes the idea of obtaining more data from airlines. However, even though the NPRM suggested that airports would be its major beneficiaries, ACI provides no credible support for a significant increase in O&D sample size or the reporting of flight-level data.[18] In fact, ACI's brief comments focus primarily on incremental measures that the Joint Commenters also support: reducing the reporting seat threshold and including foreign carriers in the survey.[19] ACI makes no argument for 100 percent data reporting and notes only that data for small markets might be "hampered" with a 10 percent sample.[20] ACI does not present any justification for a massive increase in the size and scope of data reported by airlines, nor does it articulate any public benefits that would result from the publication of these data elements.

The Boeing Company filed brief, late comments stating that it "would welcome and use all of the additional data" recommended in the NPRM for its analytical models. On the other hand, Boeing carefully tempered its desire for such additional data:

> Boeing does understand that the cost of adding to the data reporting requirements could be substantial for our airline

[18] ACI comments at 2-3.
[19] Id. at 4-5.
[20] Id.

> customers ... and we do not intend to suggest that all of the data is necessary to collect in order to update and modernize the O&D Survey.[21]

Boeing also states that requiring carriers to report fare basis category information "seems onerous, extremely expensive, and potentially harmful competitively."[22] Boeing does not attempt to justify the NPRM's proposals on a cost-benefit basis, nor does it address in any detail the competitive problems that could result from the public dissemination of massive amounts of proprietary airline data. Thus, while Boeing expresses an interest in obtaining additional airline information for its own business purposes, it offers no legal or policy basis for the NPRM's proposals. The DOT has no responsibility to satisfy a third party's desire to obtain data for its own commercial advantage, and the NPRM cannot be predicated on such a basis.

Finally, the Bureau of Labor Statistics (BLS) submitted a one-page critique of the NPRM which, *inter alia*, asserts that BLS "would like to have" more information about airline passengers. The BLS states that its primary interest is acquiring information on the passenger's *residency*, which the BLS needs "to determine whether a trip constitutes an import or export transaction." The BLS does not explain why the NPRM is an appropriate vehicle for such a request, nor how it would advance the legitimate functions of the *Department of Transportation*. There is nothing in the BLS comments that even remotely justifies increasing the airlines' data reporting obligations.

---

[21] Boeing comments at 1.
[22] Id. at 2.

III. BECAUSE THE NPRM CONTAINS NO JUSTIFICATION FOR SIGNIFICANT NEW REPORTING BURDENS AND IS OPPOSED BY VIRTUALLY ALL AFFECTED PARTIES, IT SHOULD BE WITHDRAWN. IF IT IS NECESSARY TO COLLECT ADDITIONAL AVIATION DATA IN THE FUTURE, THE DOT SHOULD PURSUE THE INCREMENTAL, LESS-BURDENSOME STEPS THAT MANY COMMENTERS HAVE SUGGESTED.

As demonstrated above and in our earlier Joint Comments, the NPRM contains no legal or policy justification for imposing massive new data reporting burdens on a deregulated airline industry, and has ignored the serious anti-competitive consequences of disseminating proprietary financial and operational data to the public. The comments as a whole make clear that the NPRM has no credible support from airlines or other parties. The Department should therefore withdraw the NPRM. If the Department establishes a need to collect additional data from airlines in the future for any reason, it should pursue the less-burdensome, competitively neutral steps that the Joint Commenters and several other parties have suggested for that purpose. Among these are the following:

(1) Elimination of the current seat threshold for O&D Survey reporting for aircraft of 60 seats or less. This will effectively address the NPRM's concerns with data reporting in EAS markets, since those markets are served almost exclusively with such aircraft.

(2) Inclusion of foreign air carriers in O&D Survey reporting. This will significantly expand the reporting database in many U.S. cities that serve as international gateways.

(3) Requiring O&D data to be reported by the issuing carrier rather than the operating carrier. This will ensure that interline and code-share passengers are reported more accurately in the Survey.

(4) Requiring the breakout of aggregate taxes on each ticket reported in the O&D Survey. This will facilitate an accurate measurement of both base fares and the enormous tax burden on the airline industry.

(5) Working with the airline industry to ensure that all carriers are following current regulations that are intended to ensure that O&D data is reported accurately and on a truly random basis.

(6) Identifying individual carrier data submissions that are inaccurate, incomplete, or non-random, and taking action against *those particular carriers* to ensure that they comply with the Department's reporting protocols.

(7) In the event of a national emergency or a serious transportation crisis, issuing *ad hoc* reporting directives to address any need for additional aviation data reporting. That approach is especially appropriate because the scope and duration of any additional reporting requirements can be carefully tailored to the particular circumstances at hand, while indefinite or excessive reporting burdens can be avoided. The Department has used this approach successfully in the past, with the industry's full cooperation, and can do so in the future if warranted. See Orders 2001-9-18 and 2001-10-2 (following the September 11 attacks); and Order 2003-4-12 (following the Iraq war invasion).

(8) In addition to the above measures, if in the future the Department believes it is necessary to collect more data from airlines on an ongoing basis in order to meet its statutory responsibilities, the Department should establish an informal dialogue with affected air carriers about how best to achieve that objective without imposing undue costs on the carriers, disclosing proprietary information, or disseminating data that could inhibit airline competition. If the Department can establish a legitimate regulatory need for additional airline data, the undersigned carriers are willing to engage in a constructive dialogue on this basis.

Beyond this, as we indicated in our earlier comments, the Joint Commenters would be willing to move from quarterly to monthly reporting of O&D data *if* the Department can demonstrate a legitimate regulatory need for monthly data, the scope of data reported and the 45 day reporting window remain unchanged, and the DOT does not publicly release such data prior to carriers' quarterly earnings reports for SEC purposes.[23] In addition, the Joint Commenters would not rule out agreeing to a modest increase in the O&D sample size (but no more than 20%) if the Department were to advance a convincing need and justification for such an increase in all markets. As we have noted above, the NPRM has not done this.

As we have shown, the NPRM has not quantified the purported deficiencies with current aviation data or their detrimental effects on the DOT's policy-making responsibilities. Without this, wholesale changes to the current O&D reporting regime cannot be justified. In our view, any deficiencies with the current aviation data are much

[23] July 18 Joint Comments at 14-16.

narrower and more isolated than the NPRM suggests, *i.e.*, they are limited to very small (EAS) markets or a few individual carriers that are submitting non-random or inaccurate reports. The fact that some parties would "like to have" additional airline data is irrelevant. Airlines cannot be compelled to produce information that is not essential to the Department's performance of its prescribed statutory duties. The NPRM seems to ignore this principle, and instead would saddle the entire airline industry with massive new reporting obligations that penalize small and low-cost carriers in particular. The steps we have outlined above, on the other hand, are intended to enable the DOT to craft a legitimate regulatory solution that is proportional to any narrow "problem" that may exist with aviation data in the future.

IV. PROCEDURAL AND OTHER ISSUES.

The Joint Commenters also take this opportunity to comment on the following issues:

i. Transition period – Based on the comments filed, the current NPRM should be terminated and the Department should refocus its efforts on discrete enhancements to the O&D survey that are truly necessary. It is therefore premature to address an appropriate transition period to a modified reporting regime. If the Department issues a revised NPRM concerning aviation data reporting, we will revisit this issue.

ii. Enhancements to T-100 Survey – The NPRM does not include any concrete changes to the T-100 survey in the text of its specific proposed rule.[24] The NPRM preamble does, however, contain a brief, unexplained statement that the

[24] 70 Fed. Reg. at 8196-98.

Department would like to collect T-100 survey data by Master Flight Number and flight time.[25] Based on our initial review, the Joint Commenters would oppose these changes as they do not appear necessary to accomplish any legitimate regulatory function. Additional comment at this time is premature, however, because the NPRM has not proffered a specific proposal, nor explained how T-100 changes would relate to any O&D Survey changes. If the Department proposes specific changes to T-100 reporting in the future, we will comment upon them at that time.

iii. Stay pending appeal – If, notwithstanding the deficiencies of the NPRM and its lack of evidentiary support, the Department adopts a requirement for flight-level reporting of O&D data, we request that the Department contemporaneously issue a stay of such requirement until the final resolution of an appeal by aggrieved parties. Such a stay would be necessary to prevent irreparable harm to both airlines and the travelling public, as well as to avoid the temporary imposition of costly changes in data reporting obligations that are ultimately likely to be struck down by a reviewing court. See *Virginia Pet. Jobbers Ass'n v. FPC*, 259 F.2d 921 (D.C. Cir. 1958), as modified by *Washington Metropolitan Transit Comm. v. Holiday Tours*, 559 F. 2d 841 (D.C. Cir. 1977).

III. CONCLUSION

For the reasons given above and in our July 18, 2005 Joint Comments, we urge the Department to promptly terminate the NPRM in this proceeding. If the Department later determines it is necessary to expand aviation data reporting obligations in the

[25] Id. at 8175-76.

future, it should pursue the specific incremental steps outlined above to accomplish that objective in an appropriate, lawful, and acceptable way.

Respectfully submitted,

Richard Magurno /LC
Richard Magurno
AIRTRAN AIRWAYS

Thomas O'Grady /LC
Thomas O'Grady
ALASKA AIRLINES

Brian T. Hunt /LC
Brian T. Hunt
ATA AIRLINES

Edward P. Faberman /LC
Edward P. Faberman
AIR CARRIER ASSOCIATION
OF AMERICA

David Sislowski /LC
David Sislowski
FRONTIER AIRLINES

Richard J. Kennedy /LC
Richard J. Kennedy
INDEPENDENCE AIR

Robert C. Land /LC
Robert C. Land
JETBLUE AIRWAYS

Carol Skornicka /LC
Carol Skornicka
MIDWEST AIRLINES

Robert W. Kneisley /LC
Robert W. Kneisley
SOUTHWEST AIRLINES

Mark S. Kahan /LC
Mark S. Kahan
SPIRIT AIRLINES

Michelle Matheson /LC
Michelle Matheson
US AIRWAYS

September 30, 2005